

ORRICK, HERRINGTON & SUTCLIFFE LLP

Norman C. Hile (SBN: 57299)
nhile@orrick.com
Cameron L. Desmond (SBN: 268925)
cdesmond@orrick.com
400 Capitol Mall, Suite 3000
Sacramento, California 95814
Telephone: (916) 447-9200
Facsimile: (916) 329-4900

DYKEMA GOSSETT LLP

John M. Thomas, SBN: 266842
jthomas@dykema.com
Brian H. Newman, SBN: 205373
bnewman@dykema.com
Ashley R. Fickel, SBN: 237111
afickel@dykema.com
333 South Grand Avenue, Suite 2100
Los Angeles, California 90071
Telephone: (213) 457-1800
Facsimile: (213) 457-1850

Attorneys for Defendants
AMERICAN HONDA MOTOR CO., INC.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STACIE ZAKSKORN, JESSICA
MELGOZA, AND RACHELLE
SCHREIBER, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AMERICAN HONDA MOTOR CO.,
INC.; HONDA NORTH AMERICA,
INC.; AND HONDA MOTOR
COMPANY, LTD.

Defendants.

AND RELATED CASE

Case No. 11-CV-02610-KJM-KJN

Related Case: CIV S-11-3120 KJM-
KJN

DISCOVERY MATTER

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

1 WHEREAS Defendant American Honda Motor Co., Inc. (“Honda”) and
2 Plaintiffs Stacie Zakskorn, Jessica Melgoza, Rachelle Schreiber, and Javier Hidalgo
3 (in related case) (“Plaintiffs”) (collectively, “Parties”) anticipate that they may
4 produce certain “Confidential Information,” as defined below, in their Rule 26 initial
5 disclosures, in their responses to written discovery, during deposition testimony,
6 during confidential settlement discussions, or in response to other requests in the
7 matter captioned Zakskorn et al. v. American Honda Motor Co., Inc. (Case No. 11-
8 CV-02610-KJM-KJN and related case Hidalgo v. American Honda Motor Co., Inc.
9 CIV S-11-3120 KJM-KJN (the “Action”), Honda and Plaintiffs, through their
10 undersigned counsel, hereby stipulate and agree that the Court may enter a Protective
11 Order based on the following Stipulated Confidentiality Agreement for Entry of
12 Protective Order (“Agreement”), as set forth below:

13 WHEREAS, this case concerns claims raised by Plaintiffs relating to model
14 year 2008 through 2010 Honda Civic vehicles (Zakskorn) and model year 2008
15 through 2011 Honda Civic vehicles (Hidalgo) distributed by American Honda Motor
16 Co., Inc.;

17 WHEREAS, given the nature of the claims and defenses asserted by the
18 Parties, discovery will focus on several areas of a sensitive proprietary nature,
19 including, but not limited to, “confidential research, development, or commercial
20 information” as provided in Federal Rule of Civil Procedure 26(c);

21 WHEREAS, the Parties, through counsel, have jointly moved the Court for
22 entry of this Protective Order for purposes of protecting the Parties from “annoyance,
23 embarrassment, oppression, or undue burden or expense,” per Rule 26(c), and to
24 facilitate discovery; and

25 WHEREAS, the Parties, through counsel, stipulate that the “good cause”
26 standard set forth in Federal Rule of Civil Procedure 26(c) is met.

27 IT IS HEREBY ORDERED THAT:
28

1 1. “Party” as used herein shall include Plaintiffs, American Honda Motor
2 Co., Inc., (“AHM”) and any other Honda-related entity producing documents or
3 providing testimony in the above-captioned matter (the “Litigation”), including all
4 entities dismissed from the Litigation per the Agreement of Plaintiffs and AHM.

5 2. “Information” as used herein shall include any document, deposition
6 testimony, electronic data, interrogatory response, response to requests for
7 admissions, or other information disclosed or produced by or on behalf of a Party (or
8 any of its attorneys or other agents), or by or on behalf of a non-party (or any of its
9 attorneys or other agents), either informally or pursuant to the requirements of any
10 court order in the Litigation.

11 3. Information designated as “Confidential” pursuant to this Order
12 (“Confidential Information”) shall not be made available to any person or entity
13 except as authorized by this Order, and shall be used by the persons or entities to
14 which it is produced solely for the purposes of this Litigation and any attendant
15 appeal. The “Confidential” designation shall be made in good faith by Parties’
16 counsel.

17 4. “Confidential Information” as used herein shall mean any proprietary,
18 non-public Information designated by a Party (the “Designating Party”) as such
19 pursuant to this Order, which the Designating Party would not normally reveal to
20 third parties or would request third parties to maintain in confidence, or Information
21 of a non-party that the Designating Party must or would maintain in confidence the
22 public disclosure of which would cause specific and serious injury to the Designating
23 Party or the third party which provided the document. For purposes of this Order and
24 subject to the Federal Rules of Civil Procedure and to the extent applicable California
25 Constitution and state law, Plaintiffs contend that Confidential Information includes,
26 but is not limited to financial, sensitive personal and/or identification information.
27 Honda contends that such Confidential Information includes, but is not limited to:
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- a. Internal marketing strategies developed at the expense of the Designating Party;
- b. Organizational charts that disclose the corporate structure of the Designating Party;
- c. Information related to the internal policies and procedures of the Designating Party, or any of its predecessors, assigns, and present and former employees, agents, representatives, or other persons or entities acting at the direction or otherwise on behalf of the Designating Party;
- d. Documents related to any testing or protocols designed by, for, or on behalf of the Designating Party in order to evaluate the performance of its products;
- e. Documents, reports, or data relating to the overall financial condition of the Designating Party, including, but not limited to, pricing tables and sales or profit reports;
- f. Product development plans or strategies, whether past or present, including, but not limited to, research and development analyses;
- g. Internal management and/or personnel procedures relating to budgeting, marketing, sales, profit and loss projections, and matters of accounting;
- h. Work orders, designs, or other documents relating to the Designating Party's manufacturing process;
- i. Labor reports that might reflect on the Designating Party's pricing and manufacturing capabilities;
- j. Documents that describe the design, structure and/or operation of a Designating Party's product at issue in this Action, including schematic diagrams, manufacturing drawings, engineering drawings, engineering change orders, engineering notebooks, specifications, research notes and materials and other technical descriptions and/or depictions;

1 k. Information obtained from a non-party pursuant to a non-
2 disclosure agreement;

3 l. Agreements with any non-party, including Original Equipment
4 Manufacturers, supplies, distributors, and customers;

5 m. Any other information or documents, the disclosure of which the
6 Designating Party can demonstrated would cause a clearly defined and serious injury.

7 n. Customer information, including name, address and other
8 information reflection in records of the Designating Party.

9 5. Each party contends that documents within each category of information
10 described above, which he/she/it produces, contains highly proprietary information,
11 and protection of this information as Confidential is essential to the competitive
12 positions or privacy interests of the parties.

13 6. Protection by way of a court order is appropriate to ensure a prompt
14 mechanism to extract any designated documents from public disclosure, whether
15 inadvertent or otherwise.

16 7. Any information not designated as "Confidential" in accordance with the
17 procedures set forth herein shall not be covered by this Order.

18 8. A Designating Party shall designate Confidential Information as follows:

19 a. Documents, including those produced electronically, will be
20 designated as Confidential Information when marked with the word "Confidential"
21 on its face, as well as on each page that contains Confidential Information.

22 b. Magnetic or optical media (such as a floppy disk, CD-ROM, or
23 tape) will be designated as Confidential Information when marked or labeled with the
24 word "Confidential." If only a portion of the material contained on such a medium is
25 confidential, the Designating Party shall clearly specify those portions. If any person
26 or entity who receives such a designated medium prints or otherwise transfers to
27 another medium any of the Confidential Information, any resulting document or other
28 medium shall be marked as Confidential Information.

1 c. Physical exhibits will be designated as Confidential Information
2 when a “Confidential” label is affixed.

3 d. Discovery responses that require disclosure of Confidential
4 Information will be appended as an exhibit to the discovery response, with the exhibit
5 marked as “Confidential.”

6 e. In the event that deposition testimony contains any Confidential
7 Information, the parties may designate such portion of deposition as “Confidential”
8 by advising the court reporter and/or videographer on the record at the time such
9 testimony is given or within fifteen (15) days after the receipt of the transcript of the
10 deposition by notifying all parties and the court reporter in writing of the page and
11 line numbers of the testimony deemed “Confidential.” Any testimony reading from
12 or directly referencing confidential documents is automatically deemed to be
13 confidential, including any confidential documents used as exhibits. Nothing in this
14 Order shall prevent any employee of a Party or any outside counsel for the Parties in
15 this Litigation and their secretaries, legal assistants, or other support personnel as
16 reasonably necessary to assist outside counsel in this Litigation (collectively “Outside
17 Litigation Counsel”) from attending any deposition, except that only persons entitled
18 to receive Confidential Information shall be present when such Information is
19 disclosed at a deposition. Counsel for the Party disclosing such “Confidential
20 Information” at a deposition shall, before such Information is disclosed, advise
21 counsel for all other Parties so that appropriate safeguards can be taken to ensure that
22 only persons entitled to receive such Information pursuant to the terms of this Order
23 are present when such Information is disclosed.

24 9. Non-parties from whom discovery is sought by the Parties to this Order
25 may designate Information as “Confidential” consistent with the terms of this Order,
26 provided that such non-parties agree in writing to be bound by the Order by executing
27 the *Declaration and Agreement to be Bound* (the “Declaration”) attached hereto as
28 Exhibit A. Under such circumstances, all duties applicable to a Designating Party

1 shall apply to the non-party. All obligations applicable to Parties receiving such
2 Information shall apply to any Party receiving Information from the non-party.

3 10. Each person designating or receiving Confidential Information pursuant
4 to this Order and executing a copy of the Declaration hereby agrees to subject himself
5 or herself to the jurisdiction of this Court for purposes of any proceedings relating to
6 the performance under, compliance with, or violation of this Order.

7 11. The Parties shall retain each originally-executed Declaration until one
8 year after the conclusion of this Litigation, inclusive of any appeals.

9 12. Each person who receives any Confidential Information shall exercise
10 due and proper care in connection with the storage, custody, use, and dissemination
11 of such material, to avoid any inadvertent use by or disclosure to persons to whom
12 disclosure is not permitted under this Order.

13 13. In the event that a Party produces two or more identical or substantially
14 identical copies of a document or other Information, and any copy is designated
15 “Confidential” while other copies are not so designated, all such identical or
16 substantially identical documents or other Information shall be treated as Confidential
17 once the inconsistent designation is known. The Designating Party shall be
18 responsible for informing the Party receiving the inconsistently designated document
19 or other Information of the inconsistent designation.

20 14. If a Party inadvertently fails to designate Information as “Confidential”
21 at the time of production, the Party shall inform the Party or Parties that received the
22 Information and shall provide substitute copies of each item, appropriately marked as
23 Confidential Information. Within five (5) days of receipt of the substitute copies, the
24 receiving Party or Parties shall return or destroy the previously unmarked, or
25 incorrectly marked, items and all copies of such items.

26 15. For purposes of counting the number of days pursuant to any provision
27 of this order, days shall mean business days.
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DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
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1 16. Any Party (the “Challenging Party”) may challenge the designation of
2 Confidential Information as follows:

3 a. If a Challenging Party believes that Information designated as
4 “Confidential” has not been properly designated under the terms of this Order, the
5 Challenging Party may, within 120 days of having received the Information, provide
6 to the other Parties written notice of the disagreement. A Party is not obligated to
7 challenge the propriety of a “Confidential” designation at the time such designation is
8 made. The Challenging Party and the other Parties shall then attempt in good faith to
9 resolve the dispute informally.

10 b. Should the Challenging Party and the other Parties be unable to
11 resolve their dispute informally, Designating Party who bears the burden for such a
12 motion may request appropriate relief by Motion with the Court by following the
13 procedures set forth in Eastern District Local Rule 251 for resolving the dispute. The
14 Party seeking the “Confidential” designation bears the burden to establish that the
15 contested material is entitled to protection under Fed. R. Civ. P. 26(c). The
16 Information involved shall be treated as Confidential Information during the
17 pendency of the challenge.

18 17. If Confidential Information is used in any pretrial proceeding in this
19 Litigation (including, but not limited to, conferences, oral arguments, and hearings),
20 the Confidential Information shall not lose its status as Confidential Information
21 through such use. The Designating Party shall take all steps reasonably necessary to
22 protect the confidentiality of the Confidential Information during any such use,
23 including requesting that persons not authorized to view or hear the Confidential
24 Information leave the proceeding during its use or during any discussion involving
25 the Confidential Information.

26 18. If any Confidential Information is disclosed to any person to whom such
27 disclosure is not authorized by this Order, or other than in the manner set forth in this
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1 Order or by the Court, the Party responsible for the improper disclosure shall
2 immediately:

3 a. Inform the Parties of all facts pertinent to the disclosure that, after
4 due diligence and prompt investigation, are known to the Party responsible for the
5 improper disclosure (including the name, address, telephone number, and employer
6 of the person to whom the disclosure was made);

7 b. Take all reasonable efforts to prevent further disclosure by each
8 unauthorized person who received such information; and

9 c. Require each unauthorized person to return all Confidential
10 Information that was improperly disclosed to that person, all copies made of the
11 improperly disclosed Confidential Information, and all documents containing
12 excerpts from or reference to the improperly disclosed Confidential Information.

13 19. The Parties reserve the right to seek relief from the Court for any
14 disclosure of Confidential Information where such disclosure is not pursuant to the
15 terms of this Order and/or where Confidential Information is to be used at trial.

16 20. Disclosure by any Party of undesignated Confidential Information prior
17 to notice by any Party of the confidential nature thereof shall not be deemed a
18 violation of this Order.

19 21. Any Party reserves the right to request that the Court modify the terms of
20 this Order in the event that a Party believes that a modification is necessary. This
21 includes the right to request that the Court further restricts access to certain
22 Confidential Information that a Party deems highly sensitive in a manner beyond
23 what is provided for by this Order. If an application is made requesting modification
24 of the terms of this Order, all signatories of copies of the Declaration, as well as
25 persons described herein, shall remain bound by this Order unless and until it is
26 modified by the Court.

27 22. Nothing herein shall impose any restriction on the use or disclosure by a
28 Party of its own Information. Nor shall this Order be construed to prevent any Party

1 or its counsel from making use as they see fit of Information that was lawfully
2 available to the public, lawfully in the possession of the Party or its counsel, or
3 properly came into the possession of the Party or its counsel independent of any
4 disclosure of Confidential Information in this Litigation, or that was obtained from a
5 non-party in the course of this Litigation and was not designated as “Confidential” by
6 that non-party.

7 23. This Order shall be binding on any future Party to this Litigation.

8 24. ~~The Court shall retain jurisdiction to enforce the terms of this Order.~~

9 This Order may be modified or amended by further order of the Court.

10 25. Nothing in this Order is intended to constitute an agreement regarding
11 the scope of discovery.

12 26. Nothing in this Order is intended to affect the admissibility of any
13 document, material or information at any trial or hearing; any request for
14 confidentiality, closure or sealing of any hearing or trial must be made to the judge
15 then presiding.

16 27. Compliance with this Order in no way constitutes an admission by any
17 person or entity that any Information is or is not proprietary, confidential, or a trade
18 secret.

19 28. This Order provides for the limitation of access to Confidential
20 Information and the disposition of Confidential Information following the conclusion
21 of the Litigation as follows:

22 a. Confidential Information may be disclosed to the following
23 persons only:

24 1. The Court, court personnel, court reporters, jurors,
25 mediators, videographers, and arbitrators;

26 2. The Parties’ in-house counsel, including necessary
27 secretarial, clerical, and litigation support or copy service personnel assisting such
28 counsel;

1 3. Outside counsel for the Parties to this Litigation, including
2 necessary secretarial, clerical, and litigation support or copy service personnel
3 assisting such counsel;

4 4. Employees of the Parties who are actively involved in this
5 Litigation or who are otherwise necessary to aid counsel in this Litigation, provided
6 that any employee first executes the Declaration before receiving any Information
7 designated as “Confidential”;

8 5. Experts, including any consulting or prospective experts,
9 performing services in connection with the prosecution or defense of this Litigation,
10 together with their clerical or support personnel, provided that each individual first
11 executes a copy of the Declaration before receiving any Confidential Information;

12 6. Any person identified as having authored or previously
13 received the particular Confidential Information disclosed;

14 7. Any person being interviewed by a Party who already
15 possessed knowledge of the Confidential Information before being contacted by the
16 Party, provided that the individual first executes the DeclarationDeposition or trial
17 witnesses who appear, based upon the document itself or testimony in a deposition, to
18 have knowledge of the contents of the document designated “Confidential” or the
19 specific events, transactions, discussions, or data reflected in the document, provided
20 that any such witness first executes the Declaration before receiving any Confidential
21 Information. Confidential Information may be used only for the purposes of
22 preparing such witnesses for giving testimony, and examining or cross-examining
23 such witnesses during a deposition or trial. Such witnesses will not be permitted to
24 retain any Confidential Information unless otherwise authorized by this Order;

25 8. Outside non-expert consultants, including data processing
26 vendors and mock jurors, provided that each consultant executes a copy of the
27 Declaration before receiving any Confidential Information. Outside consultants shall
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not be permitted to retain any Confidential Information unless otherwise authorized by this Order; and

9. Any person agreed to in writing by the Parties or as ordered by the Court.

b. Nothing in this Order shall limit any Party's ability to request that the Court allow disclosure of any Confidential Information designated as such to a person not otherwise authorized to access such material under this Order.

c. All provisions of this Order restricting the use of Confidential Information shall remain binding until the conclusion of this Litigation, including appeal, unless otherwise agreed in writing by all the Parties or ordered by the Court.

29. Unless expressly authorized by statute or federal rule, or the Judicial Conference of the United States, Confidential Information that will be filed with the Court cannot be filed under seal without prior approval by the Court. The parties shall follow the procedures set forth in Local Rule 141.

30. The proceeding provisions are subject to the Court's limited jurisdiction as prescribed in Eastern District Local Rule 141.1(f).

SO STIPULATED.

Dated: May 25, 2012

CADDELL & CHAPMAN

By: _____/s/
Cory S. Fein
Attorneys for Plaintiffs
Stacie Zakskorn; Jessica Melgoza; and
Rachelle Schreiber

Dated: May 25, 2012

BURSOR AND FISHER, PA

By: _____/s/
L. Timothy Fisher
Attorneys for Plaintiff
Javier Hidalgo (in related case)

1 Dated: May 25, 2012

DYKEMA GOSSETT LLP

2
3 By: _____/s/
4 John M. Thomas
5 Brian H. Newman
6 Ashley R. Fickel
7 Attorneys for Defendants
8 AMERICAN HONDA MOTOR CO.,
9 INC.

10 **ORDER**

11 The parties' Stipulation and Protective Order filed in the matter of Zakskorn et
12 al. v. American Honda Motor Co. et al., 2:11-cv-02610 KJM KJN (Dkt. No. 31) is
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HEREBY APPROVED, except as stated below.

First, the parties' Stipulation and Protective Order shall have no effect in the
related case, Hidalgo v. American Honda Motor Co. et al., 2:11-cv-03210 KJM KJN
(E.D. Cal.), because the parties only filed the proposed Stipulation and Protective
Order in the Zakskorn matter. The two subject cases are related but not consolidated
(see Related Case Order at 2, Dkt. No. 20), and, therefore, the approval of the
proposed Stipulation and Protective Order in one case does not automatically make it
effective in the related case.

Second, in regards to paragraph 17 of the Stipulation and Protective Order, the
parties shall not ultimately control the removal of persons from, or the closing of, an
otherwise open and public courtroom with a view toward preserving the
confidentiality of information subject to the Stipulation and Protective Order. The
parties shall make any request to close a public courtroom no later than seven days
prior to the court proceeding in question, citing legal authority justifying such
closure.

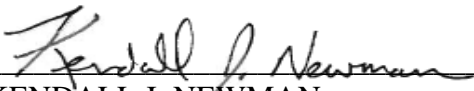
Third, paragraph 24, addressing this court's retention of jurisdiction in relation
to the Stipulation and Protective Order is stricken, as reflected above, because
paragraph 24 conflicts with this court's Local Rule 141.1(f) and paragraphs 28(c) and

30 of the Stipulation and Protective Order. The court shall not retain jurisdiction over enforcement of the terms of the Stipulation and Protective Order after closure of this case and any appeal.¹

Finally, the court notes the presence of an apparent typographical error in paragraph 28(a)(7) of the Stipulation and Protective Order; the phrase “DeclarationDeposition” appears where the parties apparently intended to use the word “Declaration.”

IT IS SO ORDERED

ATED: **Date: 5/29/2012**


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

DYKEMA GOSSETT LLP
333 SOUTH GRAND AVENUE
SUITE 2100
LOS ANGELES, CALIFORNIA 90071

¹ Because the court does not retain jurisdiction over the Stipulation and Protective Order following the closure of this case, the provisions in paragraph 28, addressing the “limitation of access to Confidential Information and the disposition of Confidential Information following the conclusion of the Litigation,” largely constitutes a private agreement of the parties.

EXHIBIT A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

STACIE ZAKSKORN, JESSICA
MELGOZA, AND RACHELLE
SCHREIBER, on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

AMERICAN HONDA MOTOR CO.,
INC.; HONDA NORTH AMERICA,
INC.; AND HONDA MOTOR
COMPANY, LTD.

Defendants.

Case No. 11-CV-02610-KJM-KJN

Related Case: CIV S-11-3120 KJM-KJN

**PROPOSED JOINT PROTECTIVE
ORDER**

AND RELATED CASE

DECLARATION AND AGREEMENT TO BE BOUND

I, _____
declare and state under penalty of perjury that:

1. My present residential address is: _____

_____.

2. My present employer is: _____

_____.

3. The address of my present employer is: _____

_____.

4. My present occupation or job description is: _____

_____.

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1 5. I have received and carefully reviewed the Protective Order dated _____
2 _____and understand its provisions. Specifically, I understand that I am
3 obligated, by order of the Court, to hold in confidence and not disclose the contents
4 of anything marked CONFIDENTIAL to anyone other than the persons permitted by
5 paragraph 28 of the Protective Order. I further understand that I am not to disclose to
6 anyone other than the persons permitted by paragraph 28 of the Protective Order any
7 words, substances, summaries, abstracts or indices of any CONFIDENTIAL
8 INFORMATION disclosed to me. I will use CONFIDENTIAL INFORMATION
9 solely for purposes relating to the above-captioned litigation. In addition to the
10 foregoing, I understand that I must abide by all of the provisions of the Protective
11 Order.

12 6. At the termination of this action or at any time requested by counsel, I
13 will return to counsel for the Party by whom I am employed or to counsel by whom I
14 am employed all documents and other materials, including notes, computer data,
15 summaries, abstracts, or any other materials containing or reflecting
16 CONFIDENTIAL INFORMATION that have come into my possession, and will
17 return all documents or things I have prepared relating to or reflecting such
18 information.

19 7. I understand that if I violate the provisions of the Protective Order, I will
20 be in violation of a Court order and subject to the sanctions or other remedies that
21 may be imposed by the Court and potentially liable in a civil action for damages by
22 the disclosing Party.

23 8. I declare under penalty of perjury of the laws of the United States that
24 the foregoing is true and correct.

25 Executed on _____

Declarant's Signature